

**REMARKS**

Applicants submit the following amendments and remarks in response to the Official Action mailed October 6, 2005. In the Official Action, the Examiner notes that an application in which the benefits of an earlier application are desired must contain a specific reference to the prior application in the first sentence of the specification pursuant to 37 C.F.R. 1.78(a)(2) and (a)(5). In response to this, Applicants have amended the first sentence of the present application to thereby properly claim priority. No new matter has been added to the application as a result of this amendment.

In the Official Action, the drawings are rejected as failing to comply with 37 C.F.R. 1.84(p)(5) because they include reference characters not mentioned in the description, specifically; 9,412, 9,405, 9,408, 9,505, 9,508, 9,410, 9,512, 9,514, 9,516. In response to this, Applicants submit herewith a substitute specification thereby including these reference characters as well as additional reference characters which are shown in the drawings but not in the original specification. Applicants submit a marked-up copy of the substitute specification as well as a clean copy. No new matter has been introduced to the application as a result of these amendments.

As requested by the Examiner, the lengthy specification has been checked to the extent necessary to determine the presence of all possible minor errors. Thus, Applicants have submitted a new substitute specification.

**35 U.S.C. §102(e) - EISERMANN**

Claims 1, 9-12, 16, 17, 19 and 20 are rejected under 35 U.S.C. §102(e) as being anticipated under U.S. Patent No. 6,827,743 to *Eisermann, et al.* In response to this rejection, Applicants have cancelled claims 1-20 of the present application

and submit herewith new claims 21-40, of which claims 21 and 31 are independent. Claim 21 and 31 include many of the similar recitations previously included within originally filed claim 1, with the additional recitation that a coating is dispersed within the groove of the first exterior surface or second exterior surface of the spacer body. The coating is disbursed on the perimeter of the intervertebral body contact element and attaches the intervertebral body contact element to the first or second exterior surface of the spacer body. This is contrasted with *Eisermann*, which discloses an implant 30 having a mesh portion 32 disposed over the implant. *Eisermann* discloses that the mesh portion 32 may include rod or spars 32A and 32B that serve to add additional stiffness and support to the mesh portion 32. Although the Examiner contends that the spars 32A are the actual contact element, the spars are actually adapted for adding stiffness to a contact element and are not a contact element themselves. Regardless, claim 1 as originally filed as well as newly added independent claims 21 and 31 include a coating disbursed about a perimeter of intervertebral contact element to thereby attach the intervertebral contact element to thereby attach an intervertebral contact element to a spacer body. The implant of *Eisermann* is completely formed of a mesh portion and does not require attachment to a surface such as the surface of a spacer body. Thus, *Eisermann* does not disclose a coating disbursed onto a wire mesh so as to attach a wire mesh to a surface of a substrate such as a spacer body. Thus, Applicants assert that the claims of the present application are in condition for allowance over *Eisermann* and should be deemed allowable.

**35 U.S.C. §102(b) - Frey, et al.**

Claims 1-20 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,932,969 to *Frey, et al.* The Examiner asserts that FIG. 1 of *Frey* shows an artificial intervertebral disc with first and second baseplates 4, 5 having domed outward facing surfaces forming the spacer body. *Frey* discloses that the baseplates are formed in multiple layers. The Examiner has interpreted that claimed elements (contact element of a wire mesh) is shown in *Frey* since there are multiple layers in *Frey*, therefore allowing the outer layer to be considered a domed mesh. *Frey* additionally discloses the contact element is buried or embedded in the plastic or "coating" that covers the contact elements at column 2, lines 50-53, but in contrast to the present invention, *Frey* discloses that the anchoring elements 4 and 5 are "embedded" in the plastic of the body 6, thus the anchoring elements of *Frey* are embedded into the actual body of the device. This is contrasted to what claim 21 which specifically recites that a coating is disbursed into a groove of a spacer body in which a portion of the intervertebral body contact element is disposed, such that the coating attaches the intervertebral body contact element to the exterior surface of the spacer body. It is clear that although the anchor elements of *Frey* are embedded in the body, the body cannot also be considered a coating as included within claim 21 as well as claim 31 of the present application. Thus, Applicants assert that newly added claims 21-40 are in condition for allowance and should be deemed patentable.

**DOUBLE PATENTING**

Claims 1-20 are provisionally rejected under the judicially created doctrine of Obviousness-Type Double Patenting as being unpatentable over claims 1-20 of co-pending application

no. 10/642,522. In response to this rejection, Applicants hereby submit a Terminal Disclaimer thereby eliminating the co-pending application 10/642,522 as prior art.


As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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